IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 97 OF 2002
IN
SPECIAL CIVIL APPLICATIONNo 4983 OF 2001
WITH
CIVIL APLICATION NO. 1034 OF 2002
IN
LETTERS PATENT APPEAL NO. 97 OF 2002

WITH

LETTERS PATENT APPEAL NO. 204 OF 2002
IN
SPECIAL CIVIL APPLICAITON NO. 799 OF 2001
WITH
CIVIL APPLICATION NO. 2864 OF 2002
IN
LETTERS PATENT APPEAL NO. 204 OF 2002

WITH

LETTERS PATENT APPEAL NO. 344 OF 2002
IN
SPECIAL CIVIL APPLICAITON NO. 11416 OF 2000
WITH
CIVIL APPLICATION NO. 3531 OF 2002
IN
LETTERS PATENT APPEAL NO. 344 OF 2002

WITH

LETTERS PATENT APPEAL NO.433 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 5418 OF 2001
WITH
CIVIL APPLICATION NO. 3179 OF 2002
IN
LETTERS PATENT APPEAL NO. 433 OF 2002

WITH

LETTERS PATENT APPEAL NO.438 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 5086 OF 2001
WITH
CIVIL APPLICATION NO. 3157 OF 2002
IN

LETTERS PATENT APPEALNO. 438 OF 2002

WITH

LETTERS PATENT APPEAL NO.451 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 9521 OF 2001
WITH
CIVIL APPLICATION NO. 3165 OF 2002
IN
LETTERS PATENT APPEAL NO. 451 OF 2002

WITH

LETTERS PATENT APPEAL NO.455 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 5049 OF 2001

WITH

CIVIL APPLICATION NO. 3146 OF 2002
IN
LETTERS PATENT APPEAL NO. 455 OF 2002

WITH

LETTERS PATENT APPEAL NO.458 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 8935 OF 2001

WITH

CIVIL APPLICATION NO. 3077 OF 2002
IN
LETTERS PATENT APPEAL NO. 458 OF 2002

WITH

LETTERS PATENT APPEAL NO. 671 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 8837 OF 2001

WITH

CIVIL APPLICATION NO. 3167 OF 2002
IN
LETTERS PATENT APPEAL NO. 671 OF 2002

WITH

LETTERS PATENT APPEAL NO. 672 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 11615 OF 2000

WITH

CIVIL APPLICATION NO. 3083 OF 2002
IN
LETTERS PATENT APPEAL NO. 672 OF 2002

WITH

LETTERS PATENT APPEAL NO.680 OF 2002
IN
SPECIAL CIVIL APPLICATION NO. 2725 OF 2000

WITH

CIVIL APLICATION NO. 4000 OF 2002
IN
LETTERS PATENT APPEAL NO. 680 OF 2002

WITH

SPECIAL CIVIL APPLICATION NO. 1468 OF 2000

WITH

SPECIAL CIVIL APPLICATION NO. 8984 OF 2001

For Approval and Signature:

Hon'ble Acting Chief Justice MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

UPENDRA P. BAROT

Appearance:

IN ABOVE ALL LETTERS PATENT APPEALS
MR. KAMAL B TRIVEDI, ADDL.ADVOCAE GENERAL with
MR AD OZA, GP and MR LR PUJARI AGP for Appellant/s

In L.P.A. No. 97/02

Mr. H.C. Raval with Mr. M.H. Raval for respondent.

In L.P.A. No. 204/02

Mr. I.S. Supehia for respondent.

In L.P.A. No. 344/02

Mrs. Sangeeta N. Pahwa for respondent

In L.P.A. No. 433/02

Mr. Mitul K. Shelat for the respondent

In L.P.A. No. 438/02

Mr. Mrs. Suman Khare for the respondent no. 1.

In L.P.A. No.451/02

Mr. C.B.Dastoor for respondent no. 1

in L.P.A. No. 455/02

Mr. Hardik C. Raval for respondent

In L.P.A. No. 458/02

Ms. Roopal Patel for the respondent

In L.P.A. No. 671/02

In L.P.A. No. 672/02

Mr. P.H. Pathak for the respondent no. 1

In L.P.A. No. 680/02

Mr. R.D. Dave for the respondent no. 1.

In Spl. C.A No. 1468 of 2000

Mr. Sunil K. Shah with Ms. Sushma S. Shah for
the petitioner.
Mr. Kamal B. Trivedi, Addl. Advocate General with
Mr. LR Pujari, AGP for the respondents.

In Spl. C.A. No. 8984 of 2001

Tanna Associates for the petitioner
Mr. Kamal B. Trivedi, Addl. Advocate General with
Mr. AD OZA, G.P. and MR LR PUJARI, A.G.P.
for the respondents.

CORAM : Hon'ble Acting Chief Justice MR.JUSTICE J.N.BHATT
and
MR.JUSTICE KUNDAN SINGH

Date of decision:-31/03/2003

C.A.V. COMMON JUDGEMENT
(Per : MR.JUSTICE KUNDAN SINGH)

1. In all these appeals as well as above petitions common questions are involved and hence all these matters are being disposed of by this common judgment. In the above two Special Civil Applications the orders of the respondent authorities of the State Government have been challenged whereby the applications of the original petitioners for compassionate appointment have been rejected.

2. All the above noted Letters Patent Appeals have been filed against the judgments and orders of the learned Single Judges whereby the concerned Special Civil Applications have been allowed directing the respondent

authorities of the State Government to reconsider the representation of the original petitioners, who are respondents in the present appeals excluding the family pension or pensionary benefits while calculating the income of the family of the original petitioners, within specified period for appointment on suitable post of Class-III or IV as the case may be on the compassionate grounds.

3. In the above two Special Civil Applications the petitioners have sought for quashing and setting aside the decision of the concerned authorities of the State Government whereby the petitioner's applications/representations for appointment on compassionate grounds have been rejected and for further direction to consider the case of the petitioners for appointment on the suitable post on compassionate ground while calculating the income of the family of the petitioner/s, the pension being received by the family of the petitioner/s should not be taken into account. The petitioners of the aforesaid petitions as well as the original petitioners moved their applications before the concerned authority of the State Government for being appointed on the suitable post either in Class-III or Class-IV on compassionate ground as their family members died during the tenure of their service and hence they are entitled to get appointment on suitable post on compassionate ground.

4. Mr. Kamal B. Trivedi, learned Addl. Advocate General appearing on behalf of the respondent State Government contended that this Court from the initial stage relied on the decisions of the Supreme Court in the case of Smt. Phoolwati Vs. Union of India (AIR 1991 SC 479) and in the case of Smt. Sushma Gosain Vs. Union of India (AIR 1989 SC 1976) and misinterpreted the Supreme Court decisions while holding that the family pension or pensionary benefits can not be included in calculating the family income of the person concerned and that income of family pension or pensionary benefits should be excluded from the family income for the consideration of compassionate appointment and in support of his arguments placed the following decisions of this Court wherein the directions have been issued to the concerned authorities of the respondents to consider the case of the original petitioners for appointment on compassionate ground on Class-III or Class-IV as the case may be, on the basis of the income fixed by the Government under the instructions, rules and policy framed by the Government, excluding the family pension being received by the family of the deceased employee :

(i) In the case of C.B. Maru Vs. Dhandhuka Nagar Panchayat, reported in 1993 (2) G.L.H. 822, wherein it is held as under :

> "To start with - to refuse to give employment to the dependent (petitioner of the deceased employee on the ground that the mother was entitled to get family pension of Rs.645/-/along with other benefits like Provident Fund, Gratuity, etc. etc. is absolutely unreasonable. Merely because the widow of deceased employee was entitled to some retrial benefits that by itself can never be made a ground to refuse appointment to the son of deceased employee on compassionate grounds."

(ii) In the case of Manubhai G. Desai Vs. State of Gujarat, reported in 1998 (1) G.L.H. (UJ) 23, by the learned Single Judge, wherein it is observed as under :

> "Moreover, as per the decision of this Court in Chanabhai Babubhai Maru Vs. President/Secretary Dhandhuka Nagar Panchayat, reported in 1993 (2) G.L.H. 822, while computing the income of the family, amount of pension ought not to have been considered"
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> In the facts and circumstances of the case, however, the authorities are directed to decide the matter in accordance with the decision of this Court including the above decisions as also the relevant circulars. Since the matter pertains to compassionate appointment, the authorities are directed to decide the same in accordance with law as expeditiously as possible preferably within four weeks from the date of receipt of the writ."

(iii) In the case of Dilipsinh B. Rathod Vs. State of Gujarat - judgment dated 13-8-1999 rendered by the learned Single Judge of this Court in Special Civil Application No. 11020 of 1993, wherein it has been held as under :

> "In any case, the fact remains that this Court has taken view in the case of C.B. Maru that appointment on compassionate grounds cannot be denied on the ground the receipt of retiral

benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (supra), this Court which placing reliance on C.B. Maru's case (supra) has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered."

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"In this view of the matter, there remains no scope so sustain the stand taken by the respondents to take the monthly income of the family of the present case to be more than Rs.1000/- merely because the widow, i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases as aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in the eye of law.

(iv) In the case of State of Gujarat Vs. Dilipsinh B. Rathod, the judgment and order dated 13-8-1999 rendered by the Division Bench of this Court in Letters Patent Appeal No. 739 of 1999 in Special Civil Application No. 11020/93, confirming the judgment and order of the learned Single Judge rendered in Spl. C.A. No. 11020/93, it is laid down as under :

"The learned Single Judge, relying upon decisions of this Court in C.B. Maru Vs. Dhandhuka Nagar Panchayat, 1993 (2) GLH 822 and Manubhai Godhabhai Desai Vs. State of Gujarat, 1998 (1) GLH (UJ) 23, held that the contention put forward by the authorities cannot be accepted. In C.B. Maru's case, the court considered a decision of the Supreme Court in Smt. Phoolwati Vs. Union of India, AIR 1991 SC 489. Learned Single Judge accordingly allowed the petition and directed the respondent authorities to decide the case of the petitioner on its own merits considering him to be eligible."

(v) In the case of Momad Safiq M Saiyed Vs. State of Gujarat, rendered by the learned Single Judge of this Court in Special Civil Application No. 12168 of 2000 on 5-3-2001, wherein it is held as under :

"Learned AGP submits that according to the GAD Circular dated 1/9/97 and the guidelines dated 24-2-99 the income of the family has been computed in case of the petitioner. Be that as it may, the fact remains that this question has been considered by this Court in more than one cases and in Special Civil Application No. 11020/93 it was considered that the income as family pension cannot be included in the income of family for the purpose of computing the limit of Rs.2500/-.

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"In the facts and circumstances of this case, this petition deserves to be allowed. The impugned order dated 15/9/2000 cannot be sustained in the eye of law the same is hereby set aside and the respondents are directed to consider the petitioner's case for appointment on compassionate ground against a suitable post in accordance with law ignoring the factum of the amount of family pension."

(vi) In the case of Upendra B. Barot Vs. Chief District Medical Officer - judgment dated 6-8-2001 rendered in Special Civil Application No. 4983 of 2001 by the learned Single Judge of this Court, wherein the learned Single Judge allowed the petition relying upon the view taken in Special Civil Application No. 11020 of 1993 in the case of Dilipsinh B. Rathod V. State of Gujarat and confirmed by the Division Bench of this Court in Letters Patent Appeal No. 739 of 1999, while considering the total income of the family of the deceased, the income of the pension is not required to be taken into consideration. In para 3 of the said judgment, it is held as under :

"Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the

petitioner has placed reliance on decision of this Court on the case of C.B. Maru V. Dhandhuka Nagar Panchayat, reported in 1993 (2) GLH 822 and yet another decision of this court in the case of Manubhai Gothabhai Desai V. State of Gujarat and ors. reported in 1998 (1) GLH (UJ) 23. In C.B Maru's case (supra) this Court while placing reliance in the case of Smt. Phoolwati Vs. Union of India and ors. reported in AIR 1991 SC 469 has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/-/per month and her husband had died on 15th October, 1990. In the case of C.B. Maru (supra) the other details of income regarding Dearness Allowance, Medical Allowance etc. had not been given, but looking to the amount of family pension of Rs.645/-/- it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (supra) the date of the death of deceased in October 1990 and therefore, there is hardly a different of about six months in the date of death. Even if 505 Dearness Allowance is added to Rs.645/-/-, it would come to Rs.645/-/- + Rs.322.50 i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/is added or even Rs.50/- it would exceed Rs.1000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubahi Gothabhai Desai (supra) has categorical observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income the family in present case to be more than Rs.1000/merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as

has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certain come to be less than Rs.1000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in the eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure 'A' dated 9-6-1992 rejecting his application is, therefore, set aside. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shorted possible period, but in no case, later than a period of one month from the date of copy of this order is served upon the Respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted."

5. The aforesaid decisions of this Court are mainly based on the decision of this Court in the case of C.B. Maru (supra) which is based on the decsiion of the Supreme Court in the case of Smt. Phoolwati Vs. Union of India & Ors, reported in AIR 1991 SC 469 which is also based on one earlier judgment of the Supreme Court in the case of Smt. Sushma Gosain and others V. Union of India and others, reported in AIR 1989 SC 1976.

6. It is contended by the learned Addl. Advocate General that the case of Smt. Sushma Gosain Vs. Union of India and others (supra) has been considered later on by the Supreme Court itself and it was held by the Supreme Court in the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and others etc. etc. reported in AIR 1998 SC 2230, wherein it is held as under :

"In the said case, this Court has considered the earlier judgment in Smt. Sushma Gosain V. Union of India, 1989 (4) SCC 468 : (AIR 1989 SC

1976). It has been observed that the said judgment has been misinterpreted to the point of distortion and that it does not justify compassionate employment as a matter of course."

7. The decision in the case of Smt. Sushma Gosain (supra) has also been considered in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, reported in 1994 (4) SCC 138, wherein it is laid down as under :

"It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain V. Union of India has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either a a matter of course or in employment in posts above Class III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. "

8. On the basis of the aforesaid decisions, learned Addl. Advocate General submitted that the Supreme Court in its subsequent decisions has not approved and confirmed the view taken in the case of Sushma Gosain (supra) and that decision of the Supreme Court is out of the picture to be relied upon by this Court. So far as the decision of the Supreme Court in the case of Smt. Phoolwati (supra) is concerned, the decision in the case of Smt. Sushma Gosain (supra) has been referred in the case of Smt. Phoolwati (supra). In the case of Smt. Phoolwati (supra), Smt. Phoolwati moved an application for interim relief for allowing her, who is none other than the wife of deceased husband Ram Krishan Lal who was employed in the Government of India Printing Press, died in harness to employ her second son in the said Printing Press and to allow her to live in the same quarter where her husband lived as an employee of the printing press. This application was dismissed by the Tribunal on the ground that her husband died about a year ago and she cannot retain the quarter which was allotted to her husband while in service. The Supreme Court issued notice and directed that pending decision of this application she be permitted to continue her stay with her sons in the said quarter. The State filed an affidavit stating that the appellant received an amount

of Rs.21,700/- as DCR Gratuity. She also received CGE Insurance amounting to Rs. 10,926/- and GPF amounting to Rs.1717/- of her deceased husband. She is also getting a Family Pension of Rs.390/- per month, and as such, she cannot continue to stay in the quarter. On behalf of the Union of India, it was stated before the Supreme Court that on the basis of the instructions it is not possible to provide her second son with an employment in the said press where her husband was previously employed. In a similar case, Smt. Sushma GosainVs. Union of India (AIR 1989 SC 1976 the Supreme Court has held as under :

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant." In short, the Union of India was directed to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualification within a period of one month from the date of the order and Smt. Phoolwati was permitted to stay in the quarter where she was residing with her members of her family.

9. In the case of Smt. Sushma Gosain (supra) the Supreme Court held that Smt. Sushma Gosain made an application for appointment as Lower Division Clerk as back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the Government Memorandum No.14034/1/77/Estt.(d) dated 25-11-1978 issued by the Ministry of Home Affairs.. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolute no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. While doing so, the Supreme Court had no occasion to examine the prevalent instructions in that behalf nor did the Supreme Court examine the income/retirement benefits being received by Smt. Phoolwati after the death of her husband. The Supreme Court has not struck down the instructions and policy of the Central Government, nor it is ratio that instructions and policy framed by the Central Government regarding the income of the family will not be considered for giving

compassionate appointment. The matter before the Supreme Court in the case of Phoolwati (supra) was regarding entertainment of her claim to continue her to stay in the quarter originally allotted to her husband. Non-consideration of family pension in case of Smt. Phoolwati was with reference to her claim for retaining the quarter for residential purpose which was originally allotted to her deceased husband and not with reference to her claim for grant of employment to her son on compassionate ground. Thus, it is not legally permissible to contend that since the orders were quashed and set aside, the instructions of the State Government in that behalf were also impliedly struck down. At the same time, it is also not permissible to the respondents to make grievance about the validity of the instructions before this Court and the judgments of this Court in the aforesaid cases have been rendered de hors the instructions of the State Government issued in this behalf from time to time and solely on the basis of the decision of the Supreme Court in the aforesaid case of Smt. Phoolwati.

10. It is also contended by the learned Addl. Advocate General that as the validity of instructions or the policy of the Central Government in respect of appointment on compassionate grounds in the cases of Smt. Phoolwati and Smt. Sushma Gosain (supra) have not been examined by the Supreme Court regarding the income criterian about pension or pensionary benefits being received by Smt. Phoolwati after death of her husband and the instructions and policy of the Central Government have not been struck down in respect of the income or pension or pensionary benefits. For the purpose of giving compassionate appointment, the judgments of this Court stated above relying upon the aforesaid two decisions of the Supreme Court, cannot be relied on in view of two grounds. Firstly at the out set the precedent or the decision of the Supreme Court should not blindly be relied upon by the Courts without examining the law propounded and the facts and circumstances of the case. In the case of State Financial Corporation V. Jagadamba Oil Mills, reported in AIR 2002 SC 834, the Supreme Court has held as under :

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the

context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpret as statutes. (1951 AC 737 at p.761) Lord Mac. Dermot observed :

"The matter cannot, of course, be settled merely by treating the ipsissima verta of Willes. J, as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to the language actually used by that most distinguished judge."

In home Office V.Dorset yacht Co., (1970 (2) All ER 294) Lord Reld said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed "One must not, of course, construe even a reserved judgment of even Rusell L.J. as if it were an Act of Parliament." And, in Herrington V. British Railways Board, (1972) 2 WLR 537 Lord Morris said :

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

Similarly the Supreme Court in the case of Prakash Amichand Shah V. State of Gujarat and others, reported in AIR 1986 SC 468, has held as under :

Before embarking upon the examination of these decisions, we should bear in mind that what is under consideration is not a statute or a

legislation but a decision of the Court. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.

It is significant that none of the learned Judges who decided the subsequent cases has held that the Act had become void on account of any constitutional infirmity. They allowed the Act to remain in force and the State Governments concerned have continued to implement the provisions of the Act. What cannot be overlooked is that the decision in Shantilal Mangaldas's case (supra) was quoted in extenso with approval and relied on by the very same Judge while deciding the Bank Nationalisation case (supra). He may have arrived at an incorrect or contradictory conclusion in striking down the Bank Nationalisation Act. The result achieved by him in subsequent case may be wholly wrong but it cannot have any effect on the efficacy of the decision in Shantilal Mangaldas's case (supra). An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare."

11. Further the Supreme Court in the case of Municipal Corporation of Greater Bombay and others Vs. Thukral Anjali Deokumar and others, reported in AIR 1989 SC 1194, it has been held as under :

"Any observation in the judgment has to be read and understood in the context of the fact of that particular case in support of which such observation has been made."

12. So far as the second aspect is concerned, the contention of the learned Additioal Advocate General is

that the Rules, Instructions of Policy of the Government cannot be ignored by the Court and the Court has no jurisdiction to take a view or decision against the Rules, Instructions and Policy framed by the Government. In support of his contentions, he relied on the decision on the following cases :

(i) The Supreme Court in the case of Regional Manager, APSRTC, Nellore and Another Vs. C.M.Pavana Kumari, reported in 2001 (1) LLJ 1681, has held as under:

> "In the normal course when there is a ban on the appointments to be made, question of directing the respondent to create a post and appoint the petitioner before the High Court was totally unwarranted. However, we think that in view of the fact that the respondent's husband having died in harness who was working as a conductor in the establishment of the appellant it is proper that her case should be considered in accordance with the scheme that is framed for making appointment on compassionate grounds. The representation made by the respondent should not have been rejected but should have considered the same in accordance with the scheme framed for the said purpose. "

(ii) The Supreme Court in the case of Orissa State Electricity Board V. Raj Kumari Pandya, reported in 1999 Supreme Court Cases (L & S) 729, has laid down as under :

> "Compassionate employment is to be given to the parties satisfying the requirements only if there are vacancies and not otherwise. To direct the employer to create supernumerary posts to accommodate such employees is not warranted by the rules. Hence, the direction is set aside."

(iii) The Supreme Court in the case of Regional Manager, A.P.S.R.T.C. and another Vs. M. Sampoornamma, reported in 1999 Supreme Court Cases (L & S) 1162, has held as under :

> "Once it is found that the decision of the employer not to make any fresh appointment is bona fide it would not be proper for the Court to question the same and in spite of the grounds. Merely because a vacancy existed it was not proper for the High Court to direct the appellant Corporation to consider the respondent and give

her appointment ignoring the ban on any fresh appointment. We, therefore, allow this appeal and quash the impugned order passed by the High Court"

(iv) The Supreme Court in the case of W.B. State Electricity Board and others Vs. Samir K. Sarkar, reported in 1997 (7) Supreme Court Cases, has considered the decision of the W.B. State Electricity Board, which is as under :

"The Board is pleased to make provision for consideration for employment of a dependent of that deceased employee in the following circumstances and subject to conditions as mentioned hereunder:

(i) in case of death of an employee due to accident arising out of and in course of employment;

(ii) employees rendered totally disabled due to an accident arising out of and in course of employment;

(iii) employees dying in harness;

(iv) employees reported missing subject to observance of formalities as prescribed by the Board;

(v) employees declared lunatic by appropriate authority.

No employment would, however, be considered in the following circumstances :

(a) Where the death under (iii) above or the incident under (iv) or the declaration under (v) above takes places in preceding two years from the scheduled date of retirement on superannuation of the concerned employees.

(b) Where a dependent of the deceased, affected employee is already in employment of the Board irrespective of the date of securing such employment"

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"We find sufficient force in the contention of Mr. V.R. Reddy, leaned Senior Counsel appearing for the appellants that there is a reasonable classification and consequently the embargo that no employment would be considered when the criteria under clauses (iii), (iv) and (v) are satisfied, if such criteria happens to be within two years from the scheduled date of retirement on superannuation, cannot be held to be discriminatory. The High Court, therefore, was totally in error to hold that the embargo is violative of Article 14 of the Constitution."

(v) In the latest decision of the The Supreme Court in the case of Union of India Vs. Joginder Sharma, reported in 2002 (8) Supreme Court Cases 65, it has been held as under :

"Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate employment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is deviation of the normal recruitment process under the rules, where people are waiting in que indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India V.Asha Ramchhandra Ambekar held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions

underlying the scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

So far as the case on hand is concerned, both the Tribunal as well as the High Court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the courts/tribunals can compel the competent authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the tribunal/court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf the respondent, have been properly explained by the appellant to be not really and in substance a deviation from general policy not to relax so far as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds."

(vi) In the case of Municipal Corporation of Delhi Vs. Vir Mohd, reported in 2002 (1) S.L.R. 497, it has been held as under :

"The scheme, reproduced above, correctly requires eight considerations to be fully considered, before compassionate appointment can be granted. All these considerations are legally valid and salutary, and in conformity with the pronouncements of the Supreme Court. Since

compassionate appointment runs counter to the equality of employment guaranteed to all citizens, the management appears to have taken the correct decision in declining the request of the petitioner keeping the family income and assets in perspective. It is also significant that the deceased - father of the petitioner died shortly before he would have otherwise superannuated. The claim for compassionate appointment, is therefore, wholly unjustified."

13. Thus, on the basis of the aforesaid decisions of the Supreme Court and Delhi High Court, learned Additional Advocate General submitted that no Court has jurisdiction to direct the employer to consider or to give compassionate appointment or employment contrary to the scheme, rule, instructions or the policy framed by the Government concerned. He has also pointed out that there was no provisions for compassionate appointment to any dependent of the deceased employee who died in harness. For the first time, the Government introduced the policy for appointment on compassionate grounds in 1975 by D.O. letter of General Administration Department (GAD), bearing No.Bharat/1173/UO-1369-K, dated 13-10-1975, wherein it is stated that "It should be established that the family of deceased Government servant is really in indigent circumstances. For ascertaining such circumstances the amount of monthly income of such family from all sources and irrespective of number of dependents in the family should not be more than Rs.300/- (Rupees three hundred) per month. the information on the following points must be available on the records in order to enable the General Administration Department decide such cases :

(a) Amount of family pension, Death-cum-Retirement Gratuity, General provident Fund, Insurance, if any received by the family of deceased Government Servants.

(b) Assets e.g. house, landed property left by deceased Government servant and income derived therefrom.

(c) Share in other assets, shares etc.

(d) Any other sources of income and its amounts.

(e) Particulars of dependents in the family i.e. name, age, qualification,

occupation, relation with deceased Government servant and their income.

14. That relaxation in upper age limit, in case the person seeking appointment to a clerical post should have at least passed the S.S.C. Examination and for appointment of non-metriculates or of persons who have studied upto only Std. V to X would not be conclusive to administrative efficiency and needs to be stopped. The persons who have studied upto only Std.V to X may be considered for appointment to Class-IV posts/services to such Class III posts/service for which the educational qualification prescribed in the Recruitment Rules is below S.S.C.Exam. and the person concerned possesses that qualification. The persons have to go through regular process of recruitment and got their appointment regularised, failing which they will have to quit the job. The instructions were for consideration referred to by the GAD/Education Department. Thus, the instructions dated 13-10-1975 made a limit of monthly income of Rs.300/- p.m. and in calculation of the income limit, family pension, Death-Cum-Retirement gratuity, GPF., LTC, amount from Insurance Scheme are also to be countered and calculated. The income from the movable and immovable properties of the deceased to the family is also required to be included and the income accrued from the house, land or other assets, shares etc. or any other sources of income and its amounts is also required to be included. With above components the instructions dated 13-10-1975 were made applicable and income criteria was extended to the income upto Rs.400/- vide D.O. letter No.Bharat-1076-408-K, dated 12-5-1977. Thereafter, with the aforesaid conditions, the income criteria was extended utpo Rs.600/- p.m. plus 9% interest on GPF/Gratuities etc. vide another D.O. letter No. Bharat/1082-UO-932-K dated 20-5-1983. By other instructions vide D.O. Letter No. Bharat-1083-1666-K dated 27-12-1983 9% p.a. interest was waived to be included in the limit of Rs.600/- p.m. By another instructions vide D.O. letter No. Bharat-1084-K dated 16-2-1987, with effect from 1-2-1987 in the monthly income limit Rs.600/- p.m. the income of other members of family who were residing separately from the family of deceased, based on ration card, were excluded. By another instructions vide D.O. letter No. Bharat-1087-GOI-7-K, dated 3-6-1988 with effect from 1-6-1988, the income criteria was enhanced to Rs.1000/p.m. from Rs.600/p.m. including deceased family's income from all sources. By another instructions vide D.O. letter No.Bharat-1087-GOI-7-K,

dated 4-11-1988 with effect from 1-1-1988, the income of Rs.1000/- p.m. was made subject to the family pension which was required to be considered available to the employee after 7 years (family pension should not be taken into account at the date of death of deceased employee). Thereafter again income criteria was extended to Rs.1,500/- p.m. from Rs.1,000/- with effect from 1-12-1991 vide D.O. letter No.Bharat-1087-GOI-7-K, dated 16-12-1991 along with D.A. + Medical Allowance + 12% interest occurred from the income at all sources mentioned in D.O. letter dated 1-12-1991. That income criteria was further extended to Rs.2,000/- p.m. from Rs.1,500/p.m. with effect from 1-5-1992 vide D.O. letter No. Bharat-1194-K, dated 30-9-1994 with the provision that interest should not be counted with effect from 1-12-1991. By the other D.O. letter No.Bharat-1092-343-K dated 2-12-1992 with effect from 1-12-1992 the income criteria was remained as Rs.2000/p.m. but it was provided that compassionate appointment can be given in Secretariat department in case of secretariat employees. Thereafter, vide another D.O. letter No. Bharat-2197-K, dated 14-8-1997 with effect from 1-1-1995, the income criteria was extended to Rs.2,500/- p.m. including pension at normal rate, D.A., Medical Allowances and income from movable and immovable properties and income from all sources. Again vide D.O. letter No. Bharat-1097-60-K, dated 24-2-1999/1-9-1999 the income and income limit should be considered as on the date of deceased employee expired.

15. The Government of Gujarat revised the scheme for compassionate appointment to the members of the family of Class-III and Class-IV employees who died during service vide D.O. letter No.Bharat-2197-K, dated 10-3-2000 and by this G.R. the Government of Gujarat abrogated all existing instructions to bring into force the revised scheme for giving compassionate appointment to one member of member of the dependent family of Class-III and Class IV employees who died during service as per the Appendix-I, with the condition that the persons who died after the date of the resolution dated 10-3-2000, whereas in the cases prior to that the instructions prevailing for the time being shall apply. No right is established for compassionate appointment under this scheme. In the Appendix to the GR dated 10-3-2000, the persons who were eligible, the conditions have been prescribed. Such appointments cannot be made available to dependant of dying person on daily wage worker, casual worker, apprentice, ad hoc basis or on contract basis. Such appointments may be made only on available vacancies due to be filled after effect prescribed cut. As such, an

application for securing compassionate ground is required to be made immediately after death of the employee concerned. Such application cannot be entertained after period of three months. Other relevant conditions have also been prescribed in the aforesaid G.R. dated 10-3-2000. The benefits of Resolution dated 10-3-2000 were extended by the Government of Gujarat vide Resolutions bearing No. Bharat-1201-910 (3)-K, dated 7-9-2002 and No. Bharat-1201-910 (2)-K, dated 7-9-2002 to the dependent of the Government employees who died during 1-1-1996 to 9-3-2000. For the purpose of implementation of the revised scheme for compassionate appointment the resolution dated 10-3-2000 would be effective from 1-1-1996 for the purpose of limit of income only and the income limit of the family of the deceased employee was removed or lifted. It is also provided in the revised GR dated 7-9-2002 that regardless of any member of the dependent family separated before the death of the employee is an earning member and living with them, widow or widower of the deceased employee may be given compassionate appointment on the priority basis without considering the income of any other member of the dependent family, and if the concerned widow or widower is not willing to avail service, any other member of the dependent family may be considered for giving compassionate appointment provided he/she is eligible for the appointment and fulfils all the conditions including the time-limit for submitting application. But, while considering the same, if the dependent member of the deceased employee is under regular appointment with Government of India, Government of Gujarat or other State Government, semi-Government, grant-in-aid institutes, local self-governing institutions taluka/district panchayats, nationalized banks, co-operative institutions (Nagrik co-operative Banks, district milk producing federations, GUJCOMASOL, agricultural produce marketing committee of the state, district central co-operative banks) and the institutions formed under the Act of the State Government or Central Government shall not be considered a dependent for the compassionate appointment with effect from 1-1-1996. The application was required to be made for that purpose within six months from the date of death of the deceased employee and that period has been extended by this resolution from three months. The power of giving relaxation in the upper age limit is vested with the Secretary/Principal Secretary/Additional Chief Secretary of the Government. The criteria of eligibility for the candidate for compassionate appointment has been fixed.

16 Thus, learned Additional Advocate General

produced the revised scheme and instructions of the Government for providing compassionate appointment. However, he also contended that once crisis is over compassionate appointment cannot be given and such appointment cannot be given after long period. He has relied upon certain above referred decisions of the Supreme Court on this point.

17. It is also contended that the State Government has its domain to change or modify its own policy from time to time under changing of circumstances which cannot be challenged by any aggrieved person, as held by the Supreme Court in the case in the case of State of Punjab and others Vs. Ram Lubhaya Bagga and others, reported in 1998 (4) SCC 117 and 2001 (3) SCC 635. This Court is required to find out whether a particular case seeking employment on compassionate ground falls within the scope of instructions, rules and policy framed by the Government. Where there is disregard or deviation from the said instructions of the said instructions, regulations and policy of the State Government the compassionate appointment cannot be ordered. The employment on compassionate ground is not a vested right, which can be exercised at any time in future and therefore the same cannot be claimed and offered after lapse of time and after crisis is over. The consideration for compassionate appointment can be ordered and such appointment can be given to the parties who satisfy who eligibility criteria and other prescribed requirements therefor provided the requirements and if there are vacancies and not otherwise. Even there is a ban on fresh recruitment by the State Government direction cannot be issued to the Government to consider the case for suitable employment on compassionate ground. Orders and directions for consideration of appointment on compassionate ground should be made where it is possible and permissible for the employer to employ the dependent of the deceased employee. In all these instructions and policy framed by the Government of Gujarat from time to time what was supposed to be taken into consideration was the income of the deceased's family and the prevalent income limit while keeping in mind the date of death of the Government employee, the application thereof can be considered.

18. Learned Single Judges in the impugned judgments directed the authorities concerned for consideration of the applications of the original petitioners and to give appointment on compassionate ground are totally illegal and contrary to the instructions, rules an policy framed by the Government of Gujarat. Hence they are violative

of the principles laid down by the Supreme Court as stated above. Hence, the impugned judgments of the learned Single Judges are not maintainable in the eye of law and are liable to be quashed and set aside in these appeals.

19. On the contrary, the learned counsel for the respondents - original petitioners contended that the arguments and points which have been raised in the present Letters Patent Appeals were not raised before the learned Single Judges and hence they cannot be allowed to be raised for the first time in these Letters Patent Appeals. Rules, Regulations, Circulars, letters and policy framed by the State Government were not produced before the learned Single Judges and which have been produced before this Appellate Court. Such material cannot be allowed to be produced by the appellant at the appellate stage and cannot be agitated on that basis. Since the case of C.B. Maru (supra) in the year 1993 till the present batch of the petitions, the Government has accepted the judgments of the High Court and now the Government cannot make any discrimination between two sets of judgments on the same lines. In some cases recently decided appointments have been made either unconditionally or conditionally and those appointments cannot be reconsidered. There would be implied repeal of the scheme as regards family pension by virtue of the judgments of the learned Single Judges, some of which have been confirmed by the Letters Patent Appeal Bench, particularly Dilipsinh's case. Similarly, in the case of counting the interest income on the amount of gratuity, P.F., Pension, Insurance etc. this Court in Special Civil Application No. 1540 of 1997 has held that such income cannot be counted for the purpose of compassionate appointment, which has been confirmed by the Division Bench of this Court in L.P.A. No. 1352 of 1997. That provision of the scheme is not struck down but that is impliedly repealed like the present provision. The compassionate appointment scheme is not under any statutory Rules under Article 309 of the Constitution of India, or resolution, circular or any other instructions under Article 162 of the Constitution of India but it was started by the simple letter from the Secretary to another and that scheme as regards pension has been breached many times by the Government itself. Such letter cannot be overlooked or over ride the judgments of the High Court. Resolution dated 10-3-2000 dispensing with the income aspect is issued pursuant to the judgments of the High Court and hence it should have been made applicable retrospectively. No such conditions like pension income can be put on the scheme for compassionate

appointment and hence counting of pension income in the family would be irrational, arbitrary and unreasonable.

20. We have given our anxious thoughts to the contentions raised by the learned counsel for the parties. So far as the contention raised by the learned counsel for the respondents original petitioners regarding the scheme, instructions, rules and policy produced before this Appellate Court and not before the learned Single Judges is concerned, it is pure question of law and not a question of fact or mixed question of facts and law, as to whether the instructions or policy of the State Government providing income criteria should be ignored by this Court as the decision of the Supreme Court in the cases of Smt. Sushma Gosain and Smt. Phoolwati have not considered the instructions, rules and policy framed by the Government regarding compassionate appointment. As such, this Court without examining the facts and circumstances of the aforesaid two cases namely Smt. Sushma Gosain and Smt. Phoolwati regarding the observations therein are not certainly in accordance with law and this Court is not required to follow the decisions of the Supreme Court in the cases of Smt. Sushma Gosain and Smt. Phoolwati particularly Smt. Sushma Gosain's case relied on in the case of Smt. Phoolwati and that case of Smt. Sushma Gosain was considered by the Supreme Court in its subsequent judgments that it was misinterpreted on the point of distortion. Relying on the decisions of the Supreme Court in the cases of Smt. Shushma Gosain and Smt. Phoolwati, this Court has taken such a view in the C.B. Maru case that the income of pension or pensionary benefits should be excluded in computing the total income of the family of the deceased employee from all sources and the C.B. Maru case has been followed blindly by this Court in its subsequent judgment. In case this Court would have considered the pros and cons of the case and facts and circumstances of the case and the subsequent judgments would not have been rendered as in light of the subsequent judgments of the Supreme Court. The judgments of this Court requiring the authorities to consider the cases of aggrieved persons for appointment on compassionate ground with a direction to exclude the amount of pension or pensionary benefits while computing the income of the family of the deceased employee, are bad and not sustainable in the eye of law as per incuriam as held by this Court in the case of Jaisinh Jodhabhai Vaisya and Grofed Employees Union Vs. Laxminbhai Arshibhai Zala reported in 2001 (2) G.L.H. 68, wherein this Court has held as under :

"Decision of the High Court given without noticing the decision rendered by the Supreme Court cannot be considered to be good law. There can, therefore, arise no question of referring the matter to a Larger Bench when the field is directly covered by a decision of the Hon'ble Supreme Court."

21. As it is a question of law, that question of law can be raised at any stage, even before the Supreme Court also. The decisions of the learned Single Judges of this Court are against the instructions, rules and policy framed by the Government regarding the income limit which are against the decisions of the Supreme Court. The learned Single Judges are not entitled to bypass the relevant instructions, rules and policy framed by the State Government regarding employment on the basis of compassionate ground wherein the income of family pension has also been included. It is complete domain of the State Government over the policies that can be changed, modified and altered from time to time. This Court under Article 226 of the Constitution cannot direct the authorities of the State Government to ignore or relax the family pension under the instructions and to consider the applications for appointments on compassionate ground. If the instructions, rules or policy prescribe certain income limit including the family pension per incuriam that condition cannot be overlooked or ignored by this Court as held by the Supreme Court in the cases referred to above. As such, the income criteria mentioned in the instructions and policy framed by the State Government, this Court cannot interfere with the same and cannot direct the authorities concerned of the State Government contrary to the income criteria mentioned in the instructions and policy framed by the State Government even though those instructions and policy or resolution or circular etc. are not framed under any statutory Rules under Articles 309 and 162 of the Constitution of India as the Supreme Court has directed that those instructions and policy should be adhered and followed. This Court has no jurisdiction even to dispense with the income criteria with retrospective effect prior to 1-1-1996 as provided by the resolution dated 10-3-2000.

22. Considering the facts and circumstances of the case, submissions made by the learned counsel for the parties, decisions of the Supreme Court and this Court referred to hereinabove and the material on record, we are constrained to hold that this Court cannot ignore or strike down the terms and conditions of the instructions

and the policy framed by the State Government from time to time regarding the income criteria for appointment on compassionate ground. As such, all the Letters Patent Appeal are allowed and the impugned judgments and orders of the learned Single Judges rendered in the concerned petitions are hereby quashed and set aside. The above numbered petitions are dismissed and rule issued therein stand discharged subject to our observations hereafter, with no order as to costs.

23. However, in L.P.A. No. 344 of 2002 the learned counsel for the respondent original petitioners of Special Civil Application No. 11416 of 2000 contended that the the appellant authority committed grave error in calculating the family income of the deceased employee, the income of grand father has also been included such income of grand father cannot be included as per any norms or guide lines or terms and conditions of the Policy / instructions as such this Court is required to direct the authority concerned to reconsider the case of the respondent/original petitioner excluding the income of grand father. Such prayer does not appear to be unreasonable. It is also submitted that in some of he cases mentioned above, the respondents have been provided employment in compliance with the orders of the learned Single Judges of this Court, they should not be disturbed even the judgments of the learned Single Judges are not sustained.

24. In the peculiar facts and circumstances of the case, this Court thinks it just and proper that the original petitioners and the petitioners of the aforesaid writ petitions would be at liberty to make a fresh application/representation to the authorities concerned for substantiating their grievance and for their claims of appointment on compassionate ground and if such application/representation is made by the respondent / original petitioners in the Appeals or petitioners of the writ petitions, the authorities concerned of the State Government shall decide the same in accordance with law and in light of the instructions, policy and Government Resolutions dated 10-3-2000 and 7-9-2002, and relevant instructions which were in existence at the relevant time within a period of two months thereafter.

25. In view of the above order passed in the main matters, Civil Applications No. 1034, 2864, 3531, 3179, 3157, 3165, 3146, 3077, 3167, 3083 and 4000 of 2002 do not survive and accordingly the same shall stand disposed of.

(J.N. Bhatt, A.C.J.)

(Kundan Singh, J.)

/JVSatwara/